

REMARKS

In the application claims 4-9 remain pending. The claims have been amended to make explicit what was implicit therein. Support for the amendments may be found in the specification and figures as originally filed.

Claims 4-9 presently stand rejected under 35 U.S.C. § 103 as being rendered obvious by the combination of Caveney (U.S. Patent No. 5,608,621) and Shipman (U.S. Patent No. 5,819,232). The reconsideration of the rejection of the claims is respectfully requested.

In rejecting the claims, it was acknowledged that Caveney fails to disclose the use of an inventory management system over a plurality of distribution points in a supply chain. It was asserted, however, that Shipman discloses that it is well known in the art to manage inventory over a plurality of distribution points, citing to Col. 2, lines 41-62. It was therefore concluded that it would have been obvious to modify Caveney with inventory management over a plurality of distribution points as taught by Shipman since tracking inventory at various points along the supply chain gives a better picture of actual inventory locations and allows administrators to better plan for inventory needs.

In response to this rejection of the claims, it is respectfully submitted that that a rejection under 35 U.S.C. § 103 requires that a combination of references disclose, either expressly or inherently, each and every element set forth in the claims, considering the claims “as a whole.” The requirement that the claimed invention be considered “as a whole” is meant to prevent evaluation of an invention part by part, i.e., breaking an invention into its component parts and then merely finding a reference containing one part, another reference containing another part, etc., and to prevent the impermissible use of the specification of the applicant as a template to combine these parts for the purpose of deprecating the claimed invention. Thus, to assure that

such “hindsight reasoning” is not used when assessing the patentability of a claimed invention, a rejection under 35 U.S.C. § 103 requires a demonstration that an artisan of ordinary skill in the art at the time of the invention, with no knowledge of the claimed invention, would have selected the various parts from the references and combined them in the claimed manner. In other words, the test of whether it would have been obvious to select specific teachings and combine them must still be met by identification of some suggestion, teaching, or motivation in the prior art, arising from what the prior art would have taught a person of ordinary skill in the field of the invention.

As acknowledged in the rejection of the claims Caveney “fails to explicitly disclose the use of an inventory management system over a plurality of distribution points in the supply chain.” Thus, by generally failing to disclose, teach, or suggest using an inventory management system to manage items over a plurality of distribution points in the supply chain, it is respectfully submitted that Caveney fails to disclose, teach, or suggest the specifically claimed using a critical stocking ratio “to apportion the total quantity of each of the plurality of items which can be held in inventory over the forecast period in shares to a plurality of distribution points in the supply chain...”

Considering now Shipman, it is again respectfully submitted that Shipman also fails to disclose, teach, or suggest the claimed “using a critical stocking ratio for each of the plurality of items to apportion the total quantity of each of the plurality of items which can be held in inventory over the forecast period is shares to the plurality of distribution points in the supply chain...” Rather, Shipman discloses managing inventory at distribution points outside of a manufacturing facility to allow administrators to better plan for inventory needs by *using customer order lead times* to optimize safety stock levels and the restocking trigger points at the

distribution facilities. (*see* Col. 2, lines 56-62). Thus, were one to modify the system of Caveney according to the express teachings of Shipman to thereby achieve the goal of allowing administrators to better plan for inventory needs as espoused in the rejection of the claims, one would arrive at a system in which the *lead times* needed to meet the orders expected to be generated by the system of Caveney would be used to optimize safety stock levels and restocking trigger points at the distribution facilities that feed the customer facility in which the Caveney system resides. Since this is not that which is claimed, it is respectfully submitted that the combination of Caveney and Shipman fails to present a *prima facie* case of obviousness and the rejection must be withdrawn.

From the foregoing it will be appreciated that neither Caveney nor Shipman disclose, teach, or suggest the claimed “using a critical stocking ratio for an item to apportion a total quantity of the item which can be held in inventory over a forecast period in shares to a plurality of distribution points in the supply chain...” Absent the disclosure of these claimed elements in either Caveney or Shipman, it cannot be said that one with no knowledge of the claimed invention would have selected various parts from the cited references and combined them in the claimed manner. Rather, as has been demonstrated, were one to follow the suggestion, teaching, or motivation expressly set forth in the prior art, namely Shipman, one would have been led to modify Caveney to arrive at a system that simply fails to meet *all* of the elements set forth in the claims. Thus, it is respectfully submitted that the disclosure within Caveney and Shipman fails to present a *prima facie* case of obviousness and the rejection of the claims should be withdrawn.

CONCLUSION

It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Examiner is respectfully requested.

Should it be determined, however, that a telephone conference would expedite the prosecution of the subject application, the Examiner is respectfully requested to contact the attorney undersigned.

While it is not believed that any fees are due, the Commissioner is authorized to charge any fee deficiency to deposit account 50-2428 in the name of Greenberg Traurig.

Respectfully Submitted;

A handwritten signature in black ink, appearing to be 'G. Jarosik', written over a horizontal line.

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